

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS
No. 07-645V
Filed: December 20, 2011**

RUTH MOORE,

*

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Petitioner,

*

Damages Decision Based on Proffer
Influenza; Transverse Myelitis (TM)

*

*

v.

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*

SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

*

*

*

Respondent.

*

LeLand F. Dempsey, Esq., Kansas City, MO, for petitioner.
Chrysovalantis Kefalas, Esq., U.S. Dept. of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Vowell, Special Master:

On September 4, 2007, Ruth Moore filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10, *et seq.*² [the “Vaccine Act” or “Program”] alleging that she developed transverse myelitis as a result of an influenza vaccine received on November 10, 2005. See Petition. On August 31, 2010, Special Master Abell issued a decision ruling in favor of entitlement.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to delete medical or other information, that satisfies the criteria in § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, I agree that the identified material fits within the requirements of that provision, I will delete such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2006).

Petitioner filed her life care plan on March 11, 2011, and respondent's life care plan was filed on June 30, 2011. On December 13, 2011, respondent filed a proffer on award of compensation detailing compensation for life care items, lost future earnings, pain and suffering, and past unreimbursable expenses.³ On December 14, 2011, petitioner's counsel contacted my chambers and indicated petitioner accepts respondent's proffer. Pursuant to the terms stated in the attached Proffer, **I award petitioner:**

1. **A lump sum payment of \$1,021,681.76 in the form of a check payable to petitioner, Ruth Moore**, representing compensation for life care expenses expected to be incurred during the first year after judgment (\$84,148.16), lost future earnings (\$691,055.00), pain and suffering (\$234,954.91), and past unreimbursable expenses (\$11,523.69).
2. An amount sufficient to purchase an annuity contract, subject to the conditions described in paragraph II.B. of the Proffer, paid to the life insurance company from which the annuity will be purchased.

These amounts represent compensation for all damages that would be available under § 300aa-15(a).

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment in accordance with this decision.⁴

IT IS SO ORDERED.

s/Denise K. Vowell

Denise K. Vowell
Special Master

³ The proffer notes that there are no outstanding Medicaid liens against petitioner.

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party filing a notice renouncing the right to seek review.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

_____)	
RUTH MOORE,)	
)	
Petitioner,)	No. 07-645V
v.)	Special Master Vowell
)	ECF
SECRETARY OF HEALTH)	
AND HUMAN SERVICES,)	
)	
Respondent.)	
_____)	

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

I. Items of Compensation

A. Life Care Items

The respondent engaged life care planner Jacquelyn Morris, RN, BSN, CRRN, CNCLP, to provide an estimation of Ruth Moore's future vaccine-injury related needs. For the purposes of this proffer, the term "vaccine related" is as described in the special master's entitlement ruling dated August 31, 2010. All items of compensation identified in the joint life care plan, filed on December 13, 2011, as Respondent's Exhibit E, are supported by the evidence, and are illustrated by the chart entitled Appendix A: Items of Compensation for Ruth Moore, attached hereto as Tab A.¹ Respondent proffers that petitioner should be awarded all items of compensation set forth in the life care plan and illustrated by the chart attached at Tab A.

Petitioner agrees.

¹ The chart at Tab A illustrates the annual benefits provided by the life care plan. The annual benefit years run from the date of judgment up to the first anniversary of the date of judgment, and every year thereafter up to the anniversary of the date of judgment.

B. Lost Future Earnings

The parties agree that based upon the evidence of record, petitioner has suffered a past loss of earnings and will not be gainfully employed in the future. Therefore, respondent proffers that petitioner should be awarded lost earnings as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(A). Respondent proffers that the appropriate award for petitioner's lost earnings is \$691,055.00. Petitioner agrees.

C. Pain and Suffering

Respondent proffers that petitioner should be awarded \$234,954.91 in actual and projected pain and suffering. This amount reflects that the award for projected pain and suffering has been reduced to net present value. See 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

D. Past Unreimbursable Expenses

Evidence supplied by petitioner documents her expenditure of past unreimbursable expenses related to her vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$11,523.69. Petitioner agrees.

E. Medicaid Lien

Petitioner represents that there are no outstanding Medicaid liens against her.

II. Form of the Award

The parties recommend that the compensation provided to petitioner should be made through a combination of lump sum payments and future annuity payments as described below, and request that the special master's decision and the Court's judgment award the following:

A. A lump sum payment of \$1,021,681.76, representing compensation for life care expenses expected to be incurred during the first year after judgment (\$84,148.16), lost earnings (\$691,055.00), pain and suffering (\$234,954.91), and past unreimbursable expenses (\$11,523.69), in the form of a check payable to petitioner, Ruth Moore.

B. An amount sufficient to purchase an annuity contract,² subject to the conditions described below, that will provide payments for the life care items contained in the life care plan, as illustrated by the chart at Tab A attached hereto, paid to the life insurance company³ from which the annuity will be purchased.⁴ Compensation for Year Two (beginning on the first anniversary of the date of judgment) and all subsequent years shall be provided through respondent's purchase of an annuity, which annuity shall make payments directly to petitioner, Ruth Moore, only so long as petitioner is alive at the time a particular payment is due. At the Secretary's sole discretion, the periodic payments may be provided to petitioner in monthly,

² In respondent's discretion, respondent may purchase one or more annuity contracts from one or more life insurance companies.

³ The Life Insurance Company must have a minimum of \$250,000,000 capital and surplus, exclusive of any mandatory security valuation reserve. The Life Insurance Company must have one of the following ratings from two of the following rating organizations:

- a. A.M. Best Company: A++, A+, A+g, A+p, A+r, or A+s;
- b. Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1, or Aaa;
- c. Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;
- d. Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA.

⁴ Petitioner authorizes the disclosure of certain documents filed by the petitioner in this case consistent with the Privacy Act and the routine uses described in the National Vaccine Injury Compensation Program System of Records, No. 09-15-0056.

quarterly, annual or other installments. The “annual amounts” set forth in the chart at Tab A describe only the total yearly sum to be paid to petitioner and do not require that the payment be made in one annual installment.

1. Growth Rate

Respondent proffers that a four percent (4%) growth rate should be applied to all non-medical life care items, and a five percent (5%) growth rate should be applied to all medical life care items. Thus, the benefits illustrated in the chart at Tab A that are to be paid through annuity payments should grow as follows: four percent (4%) compounded annually from the date of judgment for non-medical items, and five percent (5%) compounded annually from the date of judgment for medical items. Petitioner agrees.

2. Life-contingent annuity

Petitioner will continue to receive the annuity payments from the Life Insurance Company only so long as she, Ruth Moore, is alive at the time that a particular payment is due. Written notice shall be provided to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of Ruth Moore’s death.

3. Guardianship

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

III. Summary of Recommended Payments Following Judgment

- A. Lump Sum paid to petitioner, Ruth Moore: **\$1,021,681.76**
- B. An amount sufficient to purchase the annuity contract described above in section II. B.

Respectfully submitted,

TONY WEST
Assistant Attorney General

MARK W. ROGERS
Acting Director
Torts Branch, Civil Division

VINCENT J. MATANOSKI
Acting Deputy Director
Torts Branch, Civil Division

GLENN A. MACLEOD
Senior Trial Counsel
Torts Branch, Civil Division

/s Chrysovalantis P. Kefalas
CHRYSOVALANTIS P. KEFALAS
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
Telephone: (202) 616-9197

Dated: December 13, 2011